

**DRAFT**

**CONSULTANT SERVICES AGREEMENT  
BETWEEN THE CITY OF SUNNYVALE AND TRANSCORE I.T.S., INC.  
FOR SCATS ADAPTIVE TRAFFIC SIGNAL SYSTEM EXPANSION**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and TRANSCORE I.T.S., INC., a Delaware corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to the expansion of an existing SCATS Adaptive Traffic Signal System, and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from contract execution through June 30, 2007, unless otherwise terminated. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT the lump sum amounts of One Hundred Ten Thousand and No/100 Dollars (\$110,000.00) for the Project Scope (including Procurement, Training & Set-up and Deployment and Optimization), as well as an additional Fifteen Thousand and No/100 Dollars (\$15,000.00) for the Optional Tasks of Follow-up Training and Support. Total compensation shall not exceed One Hundred Twenty Five Thousand and No/100 Dollars (\$125,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly for services provided to date. Payment shall be made within thirty (30) days upon receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability, or any other basis to the extent prohibited by federal, state, or local law. All employees of CONSULTANT shall be treated during employment without regard to their race, creed, color or national origin.
- (b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Indemnity

CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C".

12. CITY Representative

Dennis Ng, Senior Traffic Engineer, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Michael Mauritz, P.E., Vice President, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Dennis Ng, Transportation and Traffic Division  
Public Works Department  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONSULTANT: Michael Mauritz, P.E., Vice President  
Transcore I.T.S., Inc.  
488 East 6400 South, STE 375  
Murray, UT 84107

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

TRANSCORE I.T.S., INC.  
("CONSULTANT")

By \_\_\_\_\_

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Name/Title

By \_\_\_\_\_

\_\_\_\_\_  
Name/Title

## ***SCOPE OF WORK***

The following presents TransCore ITS LLC's scope of work for the expansion of the SCATS Adaptive Traffic System for the City of Sunnyvale. This scope is based on the understanding that the system will be deployed at six intersections along Mathilda Drive to the West of El Camino Real. The system communications will make use of the City's existing twisted-pair cable to provide a communications architecture that is compatible with SCATS.

This proposed scope of work is being developed with the assumption that the City of Sunnyvale will be responsible for providing the following equipment:

- McCain or SafeTran 170E controllers for all intersections
- SCATS compatible twisted-pair cable communication infrastructure
- Field and central modems
- SCATS compatible detection at all intersections

### **Scope of Work**

The following details the services that will be provided by TransCore.

#### **Task 1 - Procurement**

TransCore will procure seven 170E interface kits and the appropriate software upgrades for providing the City with the latest version of the SCATS Central Software. Also included in this will be an upgrade to a 32-intersection SCATS central license with two-year upgrade (from date of purchase).

#### **Task 2 - Training & Set-up**

TransCore will conduct 5 days of on-site system set-up training with the City. The purpose of this on-site work will be to train the City on the development of the following items:

- SCATS Graphics
- Controller Personalities
- SCATS System Data
- SCATS Adaptive Data

#### **Deliverable(s)**

- 5 days of on-site training & support provided by two people

#### **Estimate of Time**

- 5 days

#### **Task 3 - Deployment and Optimization**

TransCore will provide the City with SCATS flash-sense relay kits for installation into the cabinets. Previous experience has shown that if the owning Agency installs the kits they become more familiar with their functionality thereby increasing their ability to properly maintain and troubleshoot them in the future. The relay kits are used to sense cabinet flash status so that the flash state can be properly reported to central.



TransCore will conduct a one-week deployment trip to assist City personnel with the conversion of the intersections to the SCATS system. After deployment is completed, TransCore will assist City personnel with the field optimizations for up to 5 days. During this process, TransCore will assist the City in fine-tuning measures to maximize the efficiency of the system.

Deliverable(s)

- One-week deployment support provided by two people
- One-week operational verification support provided by one person

Estimate of Time

- 2 weeks

**Optional Task - Follow-up Training and Support**

TransCore will conduct a one-week training and support trip to assist City personnel with the optimization of the SCATS system. TransCore will also provide additional training as requested by the City.

Deliverable(s)

- One-week on-site training and support provided by two people

Estimate of Time

- 1 week

**TransCore Project Cost**

The cost for this system set-up and installation support is \$110,000. This cost includes an upgrade of the City's existing 16-intersection central SCATS license to a 32-intersection license. The cost also includes the purchase of seven 170E interface kits. The cost for the optional follow-up and support task is \$15,000, and would be for one-week of on-site support. Additional weeks could also be provided at \$15,000 per week.

The table below details the breakdown of costs associated with this scope of work.

Task	Item	Price
Task 1 – Procurement	Software Upgrade	\$50,000
Task 1 – Procurement	170E Interface Kits	\$20,000
Task 2 – Training and Set-up	Labor and Travel	\$15,000
Task 3 – Deployment and Optimization	Labor and Travel	\$25,000
<b>TOTAL</b>		<b>\$110,000</b>
Optional Task – Follow-up Training and Support	Labor and Travel	\$15,000

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

CONSULTANT shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONSULTANT shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONSULTANT shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONSULTANT, CITY, its officials, officers, directors, employees and agents from claims to the extent caused by the professional services performed under the contract, whether such services are performed by CONSULTANT or employees, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The Commercial General Liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONSULTANT's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy shall include contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.